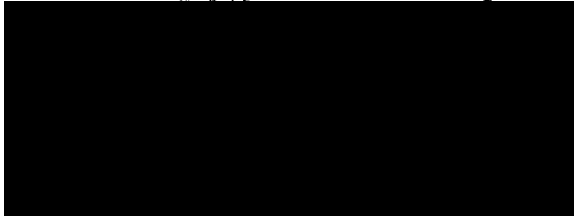


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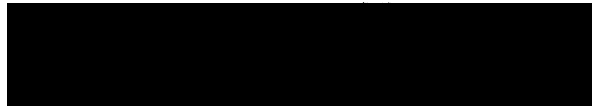


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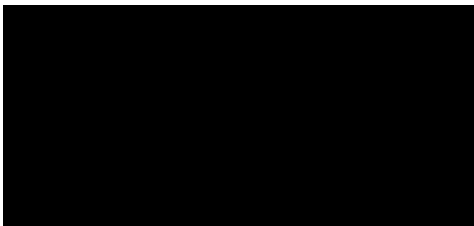
FILE: LIN 04 084 51778 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides e-business solutions. It seeks to employ the beneficiary as a business analyst. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a business analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail analyzing business and operating procedures to understand and revise work methodology and assist in remaining competitive. In particular, the beneficiary will identify operating procedures which require analysis; formulate a plan outlining the steps required to develop a review of the business procedures at issue; submit plans to the supervisor for approval; gather and organize information on business procedures, applying knowledge of business strategies and business administration; analyze data gathered; perform cost/benefit/risk analysis to determine if the methodology is compliant with the business guidelines; write a report concerning the modifications, implementation, and analysis undertaken; work with other professionals to design and evaluate the analysis; review the analysis of the operational and business plans with supervisors after having received input to the written report from supervisors and others; and participate in delegation of assignments which are based on the report. The petitioner's document entitled "Business Analyst, Job Duties and Requirements" states:

A bachelor's degree in business administration is required but a Master's degree is preferred. Other relevant fields will be considered. No experience is required.

The petitioner's January 28, 2004 letter stated that a candidate for the proffered position must possess a "Bachelor's degree in Computer Science, Engineering, Business Administration, or a related field."

The director determined that the petitioner revised its job description in the response to the request for evidence in order to establish the beneficiary's eligibility for the proposed position. The petitioner may not, the director stated, make a material change to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. Consequently, the director stated that only the original duties will be considered when adjudicating the petition, and that the focus of the proposed position is that of a programmer/analyst. The director concluded that the record did not reflect that the beneficiary's education, training, and experience are equivalent to a baccalaureate or higher degree in the specific specialty, which is required for a programmer/analyst.

On appeal, counsel contends that the petitioner amplified the job description in the response to the request for evidence without changing the initial job duties. Counsel refers to the Department of Labor's *Dictionary of Occupational Titles (DOT)* and the *Occupational Outlook Handbook (the Handbook)* to show that the position of management analyst is the most analogous occupation to the proposed position.

Upon review of the record, the director found that the proffered position is a programmer analyst, a specialty occupation. We disagree with the director's determination that the position is a specialty occupation because the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

CIS interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one which is *in a specific specialty* that is directly related to the proffered position. The record reflects that the petitioner indicated that a bachelor’s degree in business administration is required for the proposed position (a master’s degree is preferred), and that it accepts a bachelor’s degree in computer science, engineering, business administration, or a related field. This educational requirement is not enough to establish that the proposed position qualifies as a specialty occupation. As stated by the court in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

With the instant case, the petitioner accepts, among other kinds of degrees, a baccalaureate degree of generalized title - business administration - without further specification. As discussed in *Matter of Michael Hertz Assocs.*, the educational requirement of a bachelor’s degree in business administration, without further specification, fails to establish that a baccalaureate or higher degree or its equivalent *in a specific specialty* is the normal minimum requirement for entry into the particular position.

Similarly, the petitioner fails to show that a specific degree requirement is common to the industry in parallel positions among similar organizations; the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; the petitioner normally requires a degree or its equivalent in a specific specialty; or the specific duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition on the ground that the proffered position is not a specialty occupation. The AAO notes its authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within our power to formulate.

The director found that the beneficiary was not qualified to perform a specialty occupation. Given that the AAO determined that the beneficiary would not occupy a specialty occupation, whether the beneficiary is qualified to perform the duties of the proffered position is inconsequential.

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The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.